



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FEB 23 2017

URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark M. McGuire
Executive Vice President, General Counsel, and Secretary
Eaton (US) LLC, for Cooper Industries, LLC
1000 Eaton Blvd.
Cleveland, OH 44122

Re: Notice of Potential Liability and Request to Perform RI/FS Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., for the Berry's Creek Study Area, Bergen County, New Jersey

Dear Mr. McGuire:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threat of release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. Sections 9601-9675.

As you may know, EPA has documented the release and threat of release of hazardous substances into the environment at the Berry's Creek Study Area, Bergen County, New Jersey (the "Site"). In response to the release and threat of release of hazardous substances at the Site, EPA has spent public funds and anticipates spending additional public funds pursuant to CERCLA. Based on information presently available, EPA has determined that your company may be responsible under CERCLA for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

The Site includes the water body known as Berry's Creek including the Berry's Creek Canal and the natural course of Berry's Creek, all tributaries to Berry's Creek from its headwaters to the Hackensack River, and wetlands that are hydrologically connected to Berry's Creek and/or its tributaries. The Site also includes upland properties in the Berry's Creek watershed (as potential sources of contamination to the creek, but not for the purpose of detailed investigations of the upland areas themselves). Tidal portions of the Hackensack River and adjacent areas will also be studied, as necessary, to evaluate the ecological relationships and exchanges of contamination between these areas and the Site.

NOTICE OF POTENTIAL LIABILITY

Under CERCLA and other laws, responsible parties may be held liable for monies expended by the federal government in taking response actions at and around sites where hazardous substances have been released, including investigative, planning, removal, remedial and enforcement actions. Responsible parties also may be subject to orders requiring them to take response actions themselves. Responsible parties under CERCLA include, among others, the current and past owners or operators of a facility from which there has been a release or threatened release of hazardous substances, persons that arranged for the treatment or disposal of hazardous substances which were sent to such a facility, and persons that transported hazardous substances to such a facility.

By this letter, EPA notifies you that it has reason to believe that your company or its predecessor owned or operated, or currently owns or operates, a facility which engaged in activities resulting in the release of hazardous substances to the Site, or arranged for the treatment or disposal of hazardous substances which may have come to be disposed of at such facility, and is accordingly notifying your company of its status as a potentially responsible party ("PRP") under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

REQUEST TO PERFORM REMEDIAL INVESTIGATION / FEASIBILITY STUDY ("RI/FS")

By this letter, EPA invites your company to enter into the settlement with EPA which provides for the PRPs to conduct the RI/FS required at the Site. The settlement is memorialized in an administrative order on consent issued by EPA under CERCLA (U.S. EPA Index No. II-CERCLA-2008-2011) (the "AOC"). A copy of the AOC (with the appended Statement of Work (SOW)) is enclosed. It contains an explanation of the work that will be required to implement the RI/FS. In addition, as explained below, EPA will be available to meet with you to discuss questions concerning the RI/FS.

Within thirty (30) days from the date of your receipt of this letter, please submit a letter indicating your company's willingness to conduct the RI/FS. Your letter should include the following elements:

1. A statement of your company's willingness to conduct the RI/FS, by signing on to the AOC; and
2. The name, address, phone number and e-mail address of the individual who will represent your company; and

If EPA does not receive a timely response, it will assume that your company does not wish to sign the AOC, or participate in the RI/FS. In such an event, EPA will take appropriate action at the Site which could include issuance of a Unilateral Administrative Order to your company under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring that it perform the RI/FS, or EPA may perform the RI/FS and pursue a cost recovery claim against your company pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

DE MINIMIS SETTLEMENTS

Under Section 122(g) of CERCLA, whenever practicable and in the public interest, EPA may offer special settlements to owners of real property if: (1) such owner did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substances at the Superfund facility; and (2) the owner did not have actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

Individuals or businesses resolving their Superfund liability as *de minimis* parties are not typically required to perform site cleanup. Instead, EPA requires *de minimis* settlors to pay their fair share of cleanup costs incurred, plus a "premium" that accounts for, among other things, uncertainties associated with the costs of work to be performed in the future. In return, *de minimis* settlors receive: (1) a covenant not to sue, which is a promise that EPA will not bring any future legal action against the settling party for the specific matters addressed in the settlement; and (2) protection from contribution claims, which provides a settling party with protection from being sued in a contribution action by other responsible parties for the specific matters addressed in the settlement. (The matters addressed in a *de minimis* settlement are typically all cleanup actions and all cleanup costs at the particular site). Participation in a *de minimis* settlement means that you are settling directly with EPA as soon as it is possible.

The protection from contribution actions for *de minimis* settlors is based on Sections 113(f)(2) and 122(g)(5) of the CERCLA law, which provide that a person "who has resolved its liability to the United States" in an administrative or judicially approved settlement "shall not be liable for claims for contribution regarding matters addressed in the settlement." This protection against contribution claims, however, may not extend to claims by third parties that have incurred their own response costs and seek to recover them under Section 107(a)(4)(B). See *United States v. Atlantic Research Corporation*, 127 S.Ct. 2331, 168 L.Ed. 2d 28 (June 11, 2007) (in certain situations, a liable party who has incurred cleanup costs at a site can sue other liable parties under CERCLA § 107(a)(4)(B)).

If your company believes that it may be eligible for a *de minimis* settlement at this Site, please contact Clay Monroe, Assistant Regional Counsel at (212) 637-3142 for additional information on *de minimis* settlements. Additional information will be sent to you, and you may be asked to respond in writing to questions about your company's involvement with the Site to assist EPA in making a determination as to whether it may be eligible for such a settlement.

FINANCIAL CONCERNS/ABILITY TO PAY SETTLEMENTS

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs or performance of work at a site may be substantially limited. If you believe, and can document, that your company falls within that category, please contact Clay Monroe, Assistant Regional Counsel, at (212) 637-3142 for information on ability to pay settlements. In response, you will receive a package of information about the potential for such settlements and a form to fill out with information about your company's finances, and you will be asked to submit financial records including business federal income tax returns. If EPA concludes that your company has a legitimate inability to pay the full amount of EPA's costs, EPA may offer a schedule for payment over time or a reduction in the total amount demanded.

Also, please note that, because EPA has a potential claim against your company, it must include EPA as a creditor if it files for bankruptcy. EPA reserves the right to file a proof of claim or an application for reimbursement of administrative expenses.

INFORMATION TO ASSIST POTENTIALLY RESPONSIBLE PARTIES

EPA will establish an Administrative Record that contains documents that serve as the basis for EPA's selection of a cleanup action for the Site. The Administrative Record files will be available to you and the public at the Superfund Records Center, located at EPA Region 2 offices in New York City. Please contact Douglas Tomchuk at (212) 637-3956 if you wish to arrange an appointment to review Site files.

PRP STEERING COMMITTEE

John Hanson, Esq. has served as representative of the PRPs in negotiations with EPA. EPA recommends that you reach out to the steering committee through Mr. Hanson, Esq. at (202) 789-6015 or jhanson@bdlaw.com.

Your company's response to the Notice contained in this letter, including its willingness to sign the AOC, should be sent to:

Douglas Tomchuk
Remedial Project Manager
USEPA - Region 2
290 Broadway, 19th Floor
New York, New York 10007-1866

With a copy to:

Clay Monroe
Assistant Regional Counsel
USEPA - Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

EPA urges that your immediate attention and prompt response be given to this letter.

This notice is not being provided pursuant to the "special notice" procedures outlined in Section 122 (e) of CERCLA, 42 U.S.C. Section 9622 (e), because EPA does not believe that those procedures would facilitate an agreement or expedite the RI/FS for the Site.

If you have any questions regarding this Notice of Potential Liability and Request to Perform the RI/FS, or would like to discuss this matter with EPA, please call or have your attorney call Mr. Monroe at (212) 637-3142.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Eric J. Wilson". The signature is written in a cursive style with a large, stylized "E" and a long, horizontal stroke at the end.

Eric J. Wilson, Deputy Director for Enforcement and Homeland Security
Emergency and Remedial Response Division

Enclosure